

Part III - Administrative, Procedural, and Miscellaneous

Section 45D.—New Markets Tax Credit

Notice 2003-64

PURPOSE

The purpose of this notice is to announce that the Treasury Department and the Internal Revenue Service will amend the definition of a qualified low-income community investment under § 1.45D-1T(d)(1)(iv) of the temporary Income Tax Regulations to include investments through two additional qualified community development entities (CDEs) described in § 45D(c) of the Internal Revenue Code.

BACKGROUND

Section 45D(a)(1) provides a new markets tax credit on certain credit allowance dates described in § 45D(a)(3) with respect to a qualified equity investment in a CDE.

Section 45D(b)(1) provides that an equity investment in a CDE is a "qualified equity investment" if, among other requirements: (A) the investment is acquired by the taxpayer at its original issue (directly or through an underwriter) solely in exchange for cash; (B) substantially all of the cash is used by the CDE to make qualified low-income community investments; and (C) the investment is designated for purposes of § 45D by the CDE.

Section 45D(b)(2) provides that the maximum amount of equity investments issued by a CDE that may be designated by the CDE as qualified equity investments shall not exceed the portion of the new markets tax credit limitation set forth in § 45D(f)(1) that is allocated to the CDE by the Secretary under § 45D(f)(2).

Section 45D(c)(1) provides that an entity is a CDE only if, among other requirements, the entity is certified by the Secretary of the Treasury Department as a CDE.

Section 45D(d)(1) provides that the term "qualified low-income community investment" means: (A) any capital or equity investment in, or loan to, any qualified active low-income community business (as defined in § 45D(d)(2)); (B) the purchase from another CDE of any loan made by the entity that is a qualified low-income community investment; (C) financial counseling and other services to businesses located in, and residents of, low-income communities; and (D) any equity investment in, or loan to, any CDE.

Section 1.45D-1T(d)(1)(iv) provides that the term qualified low-income community investment includes any equity investment in, or loan to, another CDE by a

CDE, but only to the extent that the CDE in which the equity investment or loan is made uses the proceeds of the investment or loan in a manner: (A) that is described in § 1.45D-1T(d)(1)(i) (relating to certain investments in a qualified active low-income community business) or § 1.45D-1T(d)(1)(iii) (relating to certain financial counseling and other services); and (B) that would constitute a qualified low-income community investment if it were made directly by the CDE making the equity investment or loan.

DISCUSSION

Comments have been received suggesting that § 1.45D-1T(d)(1)(iv) should be amended to permit CDEs to make investments through multiple tiers of CDEs. For example, commentators state that some CDEs have reasons relating to bank regulatory requirements for lending to bank holding company CDEs that invest in bank subsidiary CDEs. In response to comments, § 1.45D-1T(d)(1)(iv) will be amended to include investments through two additional CDEs by providing that the term "qualified low-income community investment" includes any equity investment in, or loan to, any CDE (the second CDE) by a CDE (the primary CDE), but only to the extent that the second CDE uses the proceeds of the investment or loan:

1. In a manner that is described in § 1.45D-1T(d)(1)(i) (relating to certain investments in a qualified active low-income community business) or § 1.45D-1T(d)(1)(iii) (relating to certain financial counseling and other services), and that would constitute a qualified low-income community investment if it were made directly by the primary CDE;
2. To make an equity investment in, or a loan to, a third CDE that uses the proceeds in a manner described in the above paragraph 1; or
3. To make an equity investment in, or loan to, a third CDE that uses the proceeds to make an equity investment in, or loan to, a fourth CDE that uses the proceeds in a manner described in the above paragraph 1.

The temporary regulations will be revised to incorporate the guidance set forth in this notice. Taxpayers may rely on this notice prior to the issuance of the revised temporary regulations.

DRAFTING INFORMATION

The principal author of this notice is Paul Handleman of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Mr. Handleman on (202) 622-3040 (not a toll-free call).